



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 23, 2014

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Jose Velasquez**
Tax Registry No. 951382
102 Precinct
Disciplinary Case No. 2014-11097

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The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on July 15, 2014 and was charged with the following:

DISCIPLINARY CASE NO. 2014-11097

1. Said Police Officer Jose Velasquez, while on-duty and assigned to Transit Division District 12, on or about January 5, 2014, after having been directed by New York City Police Lieutenant Noe Campos, Tax No. 915401, to take summary action after observing a male asleep on the train, did fail and neglect to comply with said directive.

PG 203-03, Page 1, Paragraph 2

**COMPLIANCE WITH ORDERS
GENERAL REGULATIONS**

2. Said Police Officer Jose Velasquez, while on-duty and assigned to Transit Division District 12, on or about January 5, 2014, was discourteous to on-duty New York City Police Lieutenant Noe Campos, Tax No. 915401, to wit: after being given a lawful order by said Lieutenant said Police Officer did become loud and state that he was being given an unlawful order.

PG 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT - GENERAL
REGULATIONS**

3. Said Police Officer Jose Velasquez, while on-duty and assigned to Transit Division District 12, on or about January 5, 2014, did have a cap device that failed to have numbers affixed to it, as required. (*Dismissed*)

PG 204-03, Page 1

**UNIFORMS - UNIFORMS AND
EQUIPMENT**

POLICE OFFICER JOSE VELASQUEZ

DISCIPLINARY CASE No. 2014-11097


4. Said Police Officer Jose Velasquez, while on-duty and assigned to Transit Division District 12, on or about January 5, 2014, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did unnecessarily request the services of Emergency Medical Services. *(As Amended)*

PG 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT -PROHIBITED
CONDUCT
GENERAL REGULATIONS**

In a Memorandum dated October 29, 2014, Assistant Deputy Commissioner Claudia Daniels-DePeyster found Police Officer Velasquez Guilty of Specification Nos. 1, 2, and 4, and Dismissed Specification No. 3 in Disciplinary Case No. 2014-11097. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues in the various acts of misconduct for which Police Officer Velasquez has been found Guilty and deem that a period of monitoring is warranted. Therefore, Police Officer Velasquez' disciplinary penalty shall be the forfeiture of thirty (30) suspension days previously served and the imposition of one (1) year dismissal probation.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

October 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jose Velasquez
Tax Registry No. 951382
102 Precinct
Disciplinary Case No. 2014-11097

The above-named member of the Department appeared before me on July 15, 2014,
charged with the following:

1. Said Police Officer Jose Velasquez, while on duty and assigned to Transit Division District 12, on or about January 5, 2014, after having been directed by New York City Police Lieutenant Noe Campos, Tax No. 915401, to take summary action after observing a male asleep on the train, did fail and neglect to comply with said directive.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2. Said Police Officer Jose Velasquez, while on duty and assigned to Transit Division District 12, on or about January 5, 2014, was discourteous to on-duty New York City Police Lieutenant Noe Campos, Tax No. 915401, to wit: after being given a lawful order by said Lieutenant said Police Officer did become loud and state that he was being given an unlawful order.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

3. Said Police Officer Jose Velasquez, while on duty and assigned to Transit Division District 12, on or about January 5, 2014, did have a cap device that failed to have numbers affixed to it, as required. (*Dismissed*)

P.G. 204-03, Page 1 – UNIFORMS – UNIFORMS AND EQUIPMENT

4. Said Police Officer Jose Velasquez, while on duty and assigned to Transit Division District 12, on or about January 5, 2014, did engage in conduct prejudicial to the good order,

efficiency or discipline of the Department, to wit: said Police Officer did unnecessarily request the services of Emergency Medical Services. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Pamela Naples, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq. The Department made a motion to dismiss Specification No. 3. Respondent, through his counsel, entered a plea of Guilty to the remaining charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1, 2 and 4. It is recommended that the Department's motion to dismiss Specification No. 3 be granted.

MOTION TO DISMISS

The Department made a motion to dismiss Specification No. 3, which deals with Respondent wearing an improper cap device. The Department moved to dismiss because Respondent provided a copy of a receipt showing that prior to the incident date he had placed an order for the appropriate cap device with numbers.

It is recommended that the motion be granted.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a three-year member of the Department, has been assigned to Transit District 12 since graduating from the Police Academy. While working within District 12

Respondent testified that his regular duties and responsibilities consisted of “flood[ing]” the Nos. 2, 5 and 6 train lines. Throughout the first six months Respondent worked in Impact, he was assigned a partner, but later, he was allowed to work alone.

Respondent testified that in Impact, as an officer he was required to make an average of eight arrests or more per month. Respondent had an average of five arrests and ten summonses issued per month, which was considered normal to low numbers.

On January 5, 2014 Respondent was the only officer assigned to do solo train runs and directed patrol on the No. 6 line for a quality of life operation. Respondent took the No. 2 train to the No. 6 line in which he rode the train back and forth. After observing no illegal activity, Respondent decided to exit the train run at Elder Avenue, check the robbery condition, do a full inspection of Elder Avenue, and “play for activity,”¹ all of which Respondent said is typical routine activity and part of his specific assignment.

Later that evening, around 4:00 a.m., approximately five hours after his shift began, Respondent heard Lieutenant Noe Campos was looking for him from numerous texts he had received from coworkers. Campos was fairly new within the transit command coming from the TV and Movie unit. Respondent had not heard any radio calls because of poor reception within that train station. Then, around 4:35 a.m., Respondent first saw Campos in the Whitlock Station where Respondent had a 5:00 a.m. directed patrol.

Respondent described that train cars on that particular early Sunday morning as deserted, had a number of homeless people, approximately two-three passengers in each car, and the trains were running every 24 minutes. At the Whitlock station, Campos addressed Respondent, stating how hard Respondent was to find. Respondent testified that Campos had told him he was looking for activity and was disappointed to find Respondent’s memo book for that day lacked

¹ Practice of scanning for transit offenses from a hidden location.

any activity. Respondent had yet to issue any summonses or make any arrests during his January 5 shift. The only thing Respondent had noted in his memo book was an ejection report from earlier on.

Campos then told Respondent that the two of them would then conduct a TOMS,² which entailed standing on the platform looking into incoming trains for any occurring violations. While an inbound northbound train approached the station, Campos instructed Respondent to issue a summons to a female, homeless woman who was fully stretched out and occupying two train car seats, creating a hazardous condition.

Respondent explained that he was taught through his training that people who qualify as being in an outstretched position are occupying more than one seat and fully extending their feet on the seats. Respondent further explained that he was taught that if the person's feet are on the ground the officer is allowed to use his or her discretion on whether or not to straighten the person upright. [Court Exhibit 1 is the New York Code of Rules and Regulations, which defines "outstretched person" as "occupy more than one seat; or blocking movement on station, stairway, plat., train, bus, or lying down"]. Respondent explained that as an officer he was allowed to use his discretion and explained that in other situations such as dealing with a person taking up two seats due to their large body size or a pregnant woman who has her feet up while no one else is on the train car, Respondent would not issue a summons. Respondent also explained that in his experience with dealing with the homeless he generally just tries to get them to sit up if it is a crowded train car. Respondent also said frequently the arrests that he makes are pertaining to unsafe riders who usually have warrants.

Campos told Respondent this woman was an automatic arrest. Respondent followed his order by pulling the woman off of the train car, requiring her to sit on the platform bench while

² Transit Order Maintenance Sweeps

checking her ID for any warrants, in which he found none. Respondent then issued her a summons as ordered by Campos. Respondent then asked for permission to step aside and update his memo book.

Next, Respondent and Campos conducted a train run, in which the two were supposed to go according to Campos from car to car via the interconnecting doors while the train was in motion. Respondent informed his boss that he felt uncomfortable and unsafe doing such and proceeded to wait every time until the train stopped moving before he changed cars at a station. Respondent affirmed that he had been engaging in conversation with passengers on the train while in the presence of Campos and made one remark stating, "I couldn't believe he's making me arrest a person that's innocent."

About one hour later Campos said he had observed a homeless male stretched out on a two-seater. However, Respondent claims that all he observed was this man slumped over with both his feet on the floor. Respondent believed the man to be homeless due to the man's physical appearance and Respondent's experience. [Court Exhibit 2 is a photograph that Campos took of the homeless man with his phone, showing the man with both feet on the floor but with his upper body slumped over and covering a two-person seat.]

Campos ordered Respondent to arrest the sleeping homeless man. Respondent felt that to do so would go against the Penal Law and Patrol Guide. He explained, "We just gave a summons to a person that actually was fully outstretched with her feet on the seat. And this man was just sleeping, probably just doing the same as the other homeless person, trying to keep warm." According to Respondent, he did not observe anything that would give cause for an arrest. Respondent proceeded to tell Campos in a raised voice that he did not believe the man did anything wrong, and that he was not going to make the arrest because he felt it was an

unlawful order. Campos raised his voice as well because he felt disrespected. Respondent tried to explain himself but was not able to communicate his position to Campos.

Instead, Respondent decided on his own to call for medical attention because the man was neither compliant nor waking up. After the homeless man woke up Campos spoke with him and told Respondent not to call for Emergency Medical Services (EMS), but Respondent did nonetheless because the homeless man was in a deep sleep and Respondent assumed the worst. Respondent had also spoken with the homeless man who assured Respondent he did not require medical attention. Respondent believes EMS did eventually appear at the scene.

After they pulled the homeless man from the train car and Respondent refused to make the arrest, Campos suspended Respondent. Respondent stepped away from Campos and made a call to his union delegate looking for guidance in this situation. Respondent remembers stating to the delegate that it was an unlawful order and that he had just given a summons to an outstretched female.

Campos then took the homeless man to the mezzanine, called for the duty captain to respond to a non-emergency and had the sector respond as well. The other Department members did a search for any warrants on the homeless man, who was not arrested and did not receive any summons.

Respondent was suspended for 30 days without pay. Upon being modified after suspension, he was transferred from a Bronx command to a Staten Island command. He lives in the Bronx, so this transfer increased his daily commute from ten minutes to five hours. At the time of trial, he was still on modified assignment and working as a cell attendant in the 120 Precinct. He realizes now that he should have just followed what Campos wanted and dealt with the situation afterward.

PENALTY

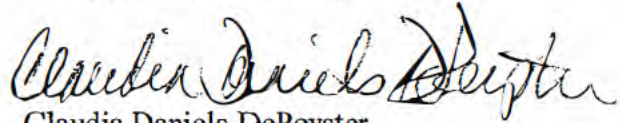
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pled Guilty to neglecting to comply with Campos's order to arrest a man sleeping on the train, discourteously stating to Campos in a loud tone of voice that the order was unlawful, and unnecessarily requesting the services of EMS. This case is virtually identical to *Case No. 78437/02* (Oct. 27, 2004), in which a ten-year police officer with no prior disciplinary record forfeited 30 suspension days and was placed on one year dismissal probation for failing to comply with an order to arrest a homeless man because it conflicted with his sense of compassion. The trial commissioner in that case noted that in a paramilitary organization officers are required to immediately comply with lawful orders issued by their supervisors. By deciding which orders he would obey, Respondent treaded on a slippery slope that would undermine the leadership and viability of the Department.

Respondent in the current case may have had the option of handling the situation differently had Campos not been at the scene. Once he received the directive from Campos, however, it was imperative that he comply. If he believed the order was unlawful, the proper course of conduct would have been for him to lodge a grievance afterward. The Court takes note that as a result of his misconduct, Respondent has spent months on modified duty status and was transferred out of borough to a rather inconvenient location.

Based on the foregoing, it is recommended that Respondent forfeit the 30 days he previously served on suspension.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE VELASQUEZ
TAX REGISTRY NO. 951382
DISCIPLINARY CASE NO. 2014-11097

In 2013, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 3.0 "Competent" and 4.0 "Highly Competent" on his two previous evaluations. [REDACTED]
[REDACTED] He has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials